

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 MAIDA RAMIREZ,

12 Plaintiff,

13 v.

14 NANCY A. BERRYHILL, Acting
15 Commissioner of Social Security,

16 Defendant.

Case No. SA CV 17-638 AFM

**ORDER DISMISSING COMPLAINT
FOR FAILURE TO PROSECUTE**

17
18 On April 4, 2017, plaintiff filed a Complaint seeking review of the
19 Commissioner's decision denying her application for benefits under the Social
20 Security Act. She subsequently was granted leave to proceed *in forma pauperis*.
21 The parties have consented to the jurisdiction of the undersigned Magistrate Judge
22 under 28 U.S.C. § 636(c). On November 14, 2017, the Court granted plaintiff's
23 request to substitute counsel and appear as a pro se plaintiff (ECF No. 24) and
24 extended the filing of Memorandum in Support of Plaintiff's Complaint to
25 December 11, 2017 (ECF No. 23). A review of the docket indicated plaintiff pro se
26 had not filed her Memorandum by December 11, 2017.

27 On December 18, 2017, the Court issued an Order to Show Cause requiring
28 plaintiff to show cause why this action should not be dismissed for failure to

1 prosecute. The Order provided that plaintiff's filing of her Memorandum by
2 January 8, 2018 would discharge the show cause order. (ECF No. 25.) A review of
3 the docket as of the date of this Order indicates that plaintiff has not responded to
4 the Order to Show Cause or filed her Memorandum.

5 Assuming that plaintiff wanted to continue to pursue this action, she was
6 obligated to comply with the Court's orders. Plaintiff has not filed a response to the
7 Order to Show Cause or her Memorandum and has not requested an enlargement of
8 time to do so. The Court possesses the inherent power to dismiss, *sua sponte*, for
9 lack of prosecution any action which has remained dormant because of the inaction
10 or dilatoriness of the parties seeking relief. *Link v. Wabash Railroad Co.*, 370 U.S.
11 626, 630-31 (1962). The exercise of such power is recognized as necessary to
12 achieve the orderly and expeditious disposition of cases. *Id.* The Local Rules of
13 this Court further implement the policy of dismissing an action in which the
14 plaintiff has failed to prosecute diligently. Civil Local Rule 41.

15 The Ninth Circuit has cited the following factors as relevant to the Court's
16 determination whether to dismiss an action for failure to prosecute: "(1) the public's
17 interest in expeditious resolution of litigation; (2) the court's need to manage its
18 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
19 disposition of cases on their merits; and (5) the availability of less drastic
20 sanctions." *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

21 The first two factors from *Carey* – public interest in expeditious resolution of
22 litigation and the need to manage the Court's docket – weigh in favor of dismissal.
23 Plaintiff has failed to comply with the Court's orders, despite being warned of the
24 consequences and granted sufficient time in which to do so. Plaintiff's conduct
25 prevents the Court from moving this case towards disposition and indicates that
26 plaintiff does not intend to litigate this action diligently.

27 The third factor – prejudice to defendants – also weighs in favor of dismissal.
28 A rebuttable presumption of prejudice to defendants arises when a plaintiff

1 unreasonably delays prosecution of an action. *See In re Eisen*, 31 F.3d 1447, 1452-
2 53 (9th Cir. 1994). Nothing suggests that such a presumption is unwarranted in this
3 case.

4 The fourth factor – public policy in favor of deciding cases on their merits –
5 ordinarily weighs against dismissal. However, it is plaintiff's responsibility to
6 move towards disposition at a reasonable pace, to comply with the local rules, and
7 to avoid dilatory and evasive tactics. *Morris v. Morgan Stanley*, 942 F.2d 648, 652
8 (9th Cir. 1991). Plaintiff has not discharged this responsibility despite having been
9 granted more than sufficient time in which to do so. In these circumstances, the
10 public policy favoring resolution of disputes on the merits does not outweigh
11 plaintiff's failure to comply with a court order.

12 The fifth factor – availability of less drastic sanctions – also weighs in favor
13 of dismissal. The Court cannot move the case towards disposition without
14 plaintiff's compliance with court orders or participation in its litigation. Moreover,
15 it does not appear to the Court that there are any less drastic sanctions available for
16 the Court to impose. Plaintiff has shown that she is either unwilling or unable to
17 comply with court orders by filing responsive documents.

18 IT THEREFORE IS ORDERED that plaintiff's Complaint is dismissed
19 without prejudice for failure to prosecute.
20

21 DATED: January 12, 2018



23 ALEXANDER F. MacKINNON
24 UNITED STATES MAGISTRATE JUDGE
25
26
27
28